

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-CBS

AFFIDAVIT OF DEBORAH S. GRIFFIN IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Deborah S. Griffin, am an attorney in the Boston office of Holland & Knight LLP and counsel of record for American Manufacturers Mutual Insurance Company ("AMMIC") in this matter. I have personal knowledge of the following, except where stated to be upon information and belief. I make this affidavit in support of Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment.

1. Attached hereto as Exhibit 1 is a true and accurate copy of pages 1, 3 and Exhibit B to the Expert Report of Lee Dore submitted by North Brookfield in this matter.

2. Attached hereto as Exhibit 2 is a true and accurate copy of the cover page and pages 7, 8, 11, 12, 16 and 17 of Sciaba's Application for Payment #10, which was marked as deposition exhibit 12 in a related case entitled *Mandate Erectors & Welding, Ltd., v. American Manufacturers Mutual Insurance Company*, now pending in the Suffolk Superior Court of the Commonwealth of Massachusetts, C.A. No. 03-1630B, and identified in the deposition of Chris Conway, Rule 30(b)(6) witness for Dore & Whittier in that case at I:31:20-24, 32:32:1-24, 33:1-16.

3. Attached hereto as Exhibit 3 are true copies of the following pages of the transcript of the first volume of the deposition of Chris Conway, Rule 30(b)(6) witness for Dore & Whittier, in the case entitled *Mandate Erectors & Welding, Ltd., v. American Manufacturers Mutual Insurance Company*, now pending in the Suffolk Superior Court of the Commonwealth of Massachusetts, C.A. No. 03-1630B: pages I:1, 31-33.

4. Attached hereto as Exhibit 4 is a true and accurate copy of the only lien release produced by any party in this matter signed by Bay State Elevator Company.

5. Attached hereto as Exhibit 5 are true and accurate copies of the only lien releases produced by any party in this matter signed by Greenwood Industries, Inc.

6. Attached hereto as Exhibit 6 is a true and accurate copy of the cover page and pages 1, 11, 16 and 17 of Sciaba's Application for Payment #11, which was marked as Deposition Exhibit 68 and identified in the deposition of Lee Dore, Rule 30(b)(6) witness for Dore & Whittier in this case at I:181.

7. Attached hereto as Exhibit 7 are true copies of the following pages of the transcript of the first volume of the deposition of Lee Dore, Rule 30(b)(6) witness for Dore & Whittier in this case: pages 1, 115, 118-19, 123, 125-133, 181-85, 188.

8. Attached hereto as Exhibit 8 is a true and accurate copy of the cover page and pages 1, 7, 8, 16 and 17 of Sciaba's Application for Payment #12, which was marked as Deposition Exhibit 70 and identified in the deposition of Lee Dore, Rule 30(b)(6) witness for Dore & Whittier in this case at I:185

9. Attached hereto as Exhibit 9 is a true copy of a letter dated June 9, 2003, from Thomas W. McEnaney, counsel for North Brookfield, to me (without its enclosures), indicating

that the Town paid \$3,361.81 to Millis Plumbing on May 22, 2003 and \$31,350 to Greenwood Industries on May 21, 2003.

10. Attached hereto as Exhibit 10 is a true and accurate copy of the only lien release produced by any party in this matter signed by Holyoke Equipment Co., Inc.

11. Attached hereto as Exhibit 11 are true and accurate copies of the only lien releases produced by any party in this matter signed by KMD Mechanical Corp.

12. Attached hereto as Exhibit 12 are true and accurate copies of the only lien releases produced by any party in this matter signed by Millis Plumbing Co.

13. Attached hereto as Exhibit 13 are true and accurate copies of the only lien releases produced by any party in this matter signed by Wayne J. Griffin Electric Co., Inc. (There were other releases signed by Griffin that reference some of the same payments as those reflected in Exhibit 13, which I considered duplicative.)

14. Attached hereto as Exhibit 14 is a true and accurate copy of Section 01310 ... CONSTRUCTION SCHEDULES of Volume 1 of the Project Manual. The entire Volume 1 of the Project Manual was marked as Deposition Exhibit 78 and identified in the Deposition of James Murray, the designated Rule 30(b)(6) witness for the Town at I:53.

15. Attached hereto as Exhibit 15 are true copies of the following pages of the transcript of the first volume of the deposition of James Murray, Rule 30(b)(6) witness for the Town of North Brookfield in this case: pages 1, 53, 94, 97, 99, 137.

16. Attached hereto as Exhibit 16 is a true and accurate copy of the March 19, 2003 School Building Committee Meeting Minutes [NB36759-60]. This document was marked as Deposition Exhibit 41 and identified in the first day of the deposition of Lee Dore at I:115.

17. Attached hereto as Exhibit 17 is a true and accurate copy of the April 2, 2003 School Building Committee Meeting Minutes [NB36755-57] This document was marked as Deposition Exhibit 42 and identified in the first day of the deposition of Lee Dore at I:118-19.

18. Attached hereto as Exhibit 18 is a true and accurate copy of the following pages of the transcript of the deposition of North Brookfield's Superintendent of Schools, Robert J. O'Neill in this case: 1, 61-63, 68-69, 85-88.

19. Attached hereto as Exhibit 19 is a true and accurate copy of the notes Mr. O'Neill made of the SBC's April 2, 2003 meeting. These notes were marked as Deposition Exhibit 180 and identified in Mr. O'Neill's deposition at I:61-63.

20. Attached hereto as Exhibit 20 is a true and accurate copy of a projection prepared by Lee Dore which was presented to the SBC at its April 16, 2003 meeting. This document was marked as Deposition Exhibit 46 and identified in the first volume of Mr. Dore's deposition at I:127:6-11 and at the deposition of Mr. O'Neill at 68-69.

21. Attached hereto as Exhibit 21 is a true and accurate copy of the minutes of the SBC's meeting of April 16, 2003. This document was marked as Deposition Exhibit 45 and identified in the first day of Mr. Dore's deposition at I:125-28.

22. Attached hereto as Exhibit 22 is a true and accurate copy of the cover page and page 1 of Sciaba's Application for Payment #13B, which was marked as Deposition Exhibit 72 and identified in the first day Mr. Dore's deposition at I:188.

23. Attached hereto as Exhibit 23 is a true and accurate copy of the minutes of the meeting of a job meeting at the Project on May 28, 2003, produced by the Town in this matter. [NB36944-47].

24. Attached hereto as Exhibit 24 is a true and accurate copy of Mr. O'Neill's notes of the May 28, 2003 Job Meeting, written on his copy of minutes of the May 14, 2003 Job Meeting. This document was marked as Deposition Exhibit 181 and identified in Mr. O'Neill's deposition at pages 85-88.

25. Attached hereto as Exhibit 25 is a true and accurate copy of Sections 3, 4, 9 and 14 of the General Conditions of the Contract between Sciaba and the Town that was marked as Deposition Exhibit 77 in the deposition of Mr. Murray at I:53.

26. Attached hereto as Exhibit 26 is a true and accurate copy of a fax from Lee Dore to Sciaba's Project Manager, Scott Finneran, requesting assurances that Sciaba could rectify numerous performance issues on the Project. This document was marked as Deposition Exhibit 44 and identified in the first day of Mr. Dore's deposition at I:123.

Signed under the penalties of perjury this 25th day of January, 2006.

/s/ Deborah S. Griffin
Deborah S. Griffin

3466854_v1
431261.00002